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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

BRUCE HOLLOWAY,

Plaintiff and Respondent,

v.

TERRY VIERRA et al.,

Defendants and Appellants.

H044505
(Santa Cruz County
Super. Ct. No. CV180394)

BRUCE HOLLOWAY,

Plaintiff and Respondent,

v.

TERRY VIERRA,

Defendant and Appellant.

H044800
(Santa Cruz County
Super. Ct. No. CV180394)

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

NO CHANGE IN JUDGMENT

THE COURT:

The court orders that the opinion filed March 14, 2019, be modified as follows:

On page 7, second full paragraph, first sentence, “Vierra,” is deleted so that the sentence reads:

In the related appeals in *Holloway, supra*, 22 Cal.App.5th 758, District and Showcase advanced similar arguments with respect to Holloway’s claim asserting Vierra’s conflict of interest in violation of section 1090.

On page 7, second full paragraph, fourth sentence, “Vierra’s” is deleted and the word “the” is to be inserted before “contention” and after “rejected” so that the sentence reads:

In *Holloway*, we rejected the contention that the validation statutes applied to Holloway’s conflict of interest claims based on our interpretation of the applicable statutes.

On page 8, first full paragraph, second sentence, “argued, and” and “here as well” is deleted so that the sentence reads:

Vierra argues that because Holloway’s complaint sought to “challenge a country water district’s action of entering into a contract, it is subject to Water Code section 30000 et seq., which provides in relevant part, ‘County Water districts shall be managed under the provisions of this division’ ”

On page 8, second full paragraph, first sentence, “that Vierra’s” is deleted and the word “a” is to be inserted after the word “found” so that the sentence reads:

We found a “. . . broad reading of Water Code section 30066 to include *all* contracts entered into by a county water district being subject to the validation requirements” was contrary to persuasive authority that the term “contracts” should be viewed narrowly to include “ ‘only those that are in the nature of, or directly relate to a public agency’s bonds, warrants or other evidences of indebtedness.’ [Citation.]”

On page 9, first paragraph, first sentence, “Vierra’s” is deleted and the word “these” is to be inserted after the word “rejected” so that the sentence reads:

We also rejected these contentions based on our reading of *Santa Clarita Organization for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300 (*Abercrombie*), a case similar both to *Holloway* and the one at bar, where the court specifically considered whether conflict of interest actions under sections 1090 and

91003⁷ of the Political Reform Act are subject to the validation statutes in the Water Code.

The petition for rehearing filed on behalf of appellant Terry Vierra is denied.

There is no change in the judgment.

Dated:

Greenwood, P.J.

Grover, J.

Danner, J.

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H044800

(Santa Cruz County
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We have before us two appeals.¹ Terry Vierra, a director of the San Lorenzo Valley Water District (District), was found liable for violating the Political Reform Act (Gov. Code, § 91005) following a court trial.² He appeals the judgment (case No. H044505). Vierra argues that the action against him was time barred, he is not a “public official” within the meaning of section 87200, and respondent Bruce Holloway, a

¹ We ordered Vierra’s two current appeals in case Nos. H044505 and H044800 considered together for briefing, oral argument and disposition.

² All further unspecified statutory references are to the Government Code.

taxpayer residing within the District's boundaries, failed to comply with the Government Claims Act (§ 905).

The trial court awarded \$116,647.47 in attorneys' fees to Holloway. Vierra also appeals that order (case No. H044800). He argues that the court abused its discretion in ordering the amount of fees.

We affirm the judgment in case No. H044505 and we affirm the attorneys' fee order in case No. H044800.³

I. STATEMENT OF THE CASE

In September 2010, District commenced negotiations to purchase real property in Boulder Creek, California from Gregory and Edwige Dildine (Dildines). Vierra's wife was the listing agent on the property, and Vierra had partial ownership in Showcase Realty (Showcase), the agency that facilitated the property sale.

Before the board meeting when the property purchase was first discussed on September 2, 2010, Vierra received a phone call from District Manager, James Mueller asking for information about the property. Vierra told Mueller during the call that his wife was the listing agent, and that he and his wife were owners of Showcase. Vierra sent an e-mail to Mueller with the listing history of the property and the amount the Dildines had paid for it.

At the September 2, 2010 board meeting, Vierra announced that he had a conflict of interest in the property transaction, and he abstained from all discussions about the property.

³ On July 20, 2017, we ordered the related appeals in case Nos. H043492, and H043704 considered together with the current appeals in case Nos. H044505 and H044800 for the purposes of oral argument and disposition. The appeals in case Nos. H043492 and H043704 were disposed of in *Holloway v. Showcase Realty Agents, Inc.* (2018) 22 Cal.App.5th 758 (*Holloway*) on April 5, 2018. On the court's own motion, we consider the current appeals in case Nos. H044505 and H044800 separate from the appeals disposed of in *Holloway*.

Mueller signed a purchase agreement for the property on behalf of District on October 10, 2010. Invoices that are submitted to the board for payment are placed on “bill lists” that are approved by the board. At the October 21, 2010 board meeting, Vierra voted along with other board members to approve five invoices on the bill list that were related to the purchase of the property. These five invoices were payments to First American Title in the amount of \$5,250.00, American Home Inspection in the amount of \$400, Daddario Roofing in the amount of \$125, De Angelo Pest Control in the amount of \$225, and Pete’s Outflow Technicians in the amount of \$425.

At the November 4, 2010 board meeting, Vierra voted to approve two invoices on the bill list that were related to the purchase of the property. These two invoices were payments to Geo-Disclosure in the amount of \$250 and Ali M. Oskoorouchi in the amount of \$500 for geotechnical evaluation of the property.

At the November 18, 2010 board meeting, Vierra voted to approve one invoice on the bill list reflecting a payment of \$415.00 to De Angelo Pest Control that was related to the purchase of the property.

District closed escrow on the property on November 24, 2010.

Holloway filed the operative second amended complaint against District, Showcase and Vierra in July 2015 alleging the following: “[Holloway] is a citizen and taxpayer served by District. Vierra was a board member of District, and a majority shareholder of Showcase. In September 2010, District began negotiations to purchase real property in Boulder Creek, California from the Dildines. The contract was finalized and escrow closed in November 2010. When escrow closed, Vierra received a real estate broker’s commission of \$13,050 through his ownership of Showcase, as well as a community property interest in his wife’s real estate commission for facilitating the sale. Holloway became aware that Vierra’s wife, who worked for Showcase, was the listing agent for the property in November 2013.

“Holloway asserted causes of action for conflict of interest against District, Showcase and Vierra pursuant to Government Code section 1090, and liability pursuant to Government Code section 91005.⁴ He sought a declaration that the real estate contract was void, and disgorgement of public monies paid to Vierra in real estate commissions, and the Dildines for the property sale.

“In September 2015, District, Showcase and Vierra filed a demurrer to the second amended complaint arguing Holloway lacked standing under Government Code section 1092,⁵ and the second cause of action for liability under Government Code section 91005 was time barred by a four-year statute of limitations as stated in Government Code section 91011, subdivision (b).” (*Holloway, supra*, 22 Cal.App.5th at pp. 761-762.)

The court sustained the demurrer without leave to amend as to the first cause of action for conflict of interest, finding Holloway did not have standing to assert the claim. The court overruled the demurrer as to the second cause of action for violation of the Political Reform Act under section 91005, finding facts sufficient to justify Holloway’s delayed discovery of Vierra’s financial interest in District’s action.⁶ (*Holloway, supra*, 22 Cal.App.5th at p. 762.)

⁴ Section 91005 is the liability provision encompassed in the Political Reform Act of 1974, as codified in sections 81000 through 91014. Section 87100 prohibits public officials from acting to influence a government decision in which they have a financial interest.

⁵ Section 1092, subdivision (a) provides, in relevant part: “(a) Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein.”

⁶ After the court overruled the demurrer to the second cause of action, Showcase filed a motion for judgment on the pleadings on the ground that liability under section 91005 could only be pursued against Vierra as the public official, and not against Showcase. Showcase filed the motion because it was not clear if Holloway was proceeding against all defendants, or Vierra alone. Holloway filed a non-opposition to the motion, which stated: “The only cause of action left is one under Government Code section 91005 and the plain language of that code applies only to a public official”

Holloway filed a notice of appeal from the judgment entered after the court sustained the demurrer to his conflict of interest cause of action in the second amended complaint. We reversed the judgment of the trial court, finding that Holloway had standing to assert his claims. (*Holloway, supra*, 22 Cal.App.5th at p. 771.)

The matter proceeded to trial against Vierra alone for violation of the Political Reform Act under section 91005 for his involvement in the property sale. District directors James Rapoza, Fred McPherson and James Nelson testified that the board formulates and approves the investment policy for District, and establishes guidelines for asset allocation and investment transactions. The District Manager testified that District's investment policy is developed and approved by the board which includes establishing guidelines for asset allocation and approving investment transactions. The Board Policy Manual states that the board is responsible for District's finances and developing and approving investment policy.

At the end of trial, the court ruled in favor of Holloway, finding that he had met his burden of proof on all of the elements of his cause of action against Vierra for violation of the Political Reform Act under section 91005, subdivision (b). Specifically, the court found that "Vierra was a public official" who "participated in, made or influenced a governmental decision in which" he "had a financial interest in the decision" and he "realized an economic benefit." The court ordered Vierra to pay a total of \$9,346.67 as a fine representing his financial gain from the property sale. \$4,673.34 was to be paid to the State's General Fund, and \$4,673.34 was to be paid to Holloway.

The trial court entered judgment in favor of Holloway on January 23, 2017. Vierra moved for a new trial and to vacate the judgment, which the trial court denied on

The court granted the motion, and entered a judgment of dismissal in favor of Showcase. The record does not contain a judgment of dismissal in favor of District. Based on the allegations in the second cause of action, and Holloway's statements in his non-opposition to Showcase's motion for judgment on the pleadings, it appears that Holloway pursued the second cause of action against Vierra alone.

March 17, 2017. Vierra filed a timely notice of appeal from the judgment on March 21, 2017, in case No. H044505.

On June 22, 2017, the trial court granted Holloway's request for attorneys' fees in the amount of \$116,647.47. On June 30, 2017, Vierra filed a timely notice of appeal from the attorneys' fee order in case No. H044800.

II. DISCUSSION

A. Case No. H044505

Vierra argues that Holloway's claim for violation of the Political Reform Act is barred by the 60-day validation statute of limitations pursuant to Water Code sections 3000 et seq., Code of Civil Procedure sections 860 and 863, and the four-year statute of limitations in section 91011, subdivision (b). Vierra also asserts that Holloway failed to comply with the Government Claims Act (§ 905), and that Vierra is not a "public official" as defined by section 87200.

1. Standard of Review

Vierra's challenges to the judgment are based on the interpretation and application of statutes, thereby posing questions of law, which we review de novo. (*Boy Scouts of America National Foundation v. Superior Court* (2012) 206 Cal.App.4th 428, 446.) "Our fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 (*Day*).) In interpreting a statute, we give "the language its usual, ordinary import and accord[] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose." (*A.M. v. Ventura Unified School Dist.* (2016) 3 Cal.App.5th 1252, 1257.) If there is no ambiguity in the language, "then we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations.] If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we "select the construction that comports most closely with the apparent

intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.” ’ ’ (Day, *supra*, 25 Cal.4th at p. 272.)

2. 60-Day Validation Statute of Limitations

Holloway filed his initial complaint challenging Vierra’s actions on November 7, 2014, four years after District entered into the real estate contract in 2010. Vierra argues that we should dismiss this appeal for lack of jurisdiction because Holloway’s complaint was filed beyond the 60-day period for validation actions as set forth in Water Code sections 30000 et seq. and Code of Civil Procedure sections 860 and 863.

In the related appeals in *Holloway, supra*, 22 Cal.App.5th 758, Vierra, District and Showcase advanced similar arguments with respect to Holloway’s claim asserting Vierra’s conflict of interest in violation of section 1090. (*Holloway, supra*, at p. 766.) Vierra did not then include a jurisdictional challenge to Holloway’s allegation that Vierra was personally liable under the Political Reform Act as set forth in section 91005. He now incorporates by reference the argument that a reverse validation action was a prerequisite to Holloway’s challenge under section 91005 using the arguments set forth in the Supplemental Briefs filed in the related appeals in *Holloway*, as allowed by California Rules of Court, rule 8.200 (a)(5). In *Holloway*, we rejected Vierra’s contention that the validation statutes applied to Holloway’s conflict of interest claims based on our interpretation of the applicable statutes. Our reasoning, summarized below, applies to Vierra’s current jurisdictional challenge as well.

“The validation statutes are found in Code of Civil Procedure sections 860 through 870.5. A public agency may file a validation action to determine the validity of any matter brought within the scope of the validation statutes. [Citation.] Alternatively, an ‘interested person’ may bring a validation action to determine the validity of the matter [Citation.]” (*Holloway, supra*, 22 Cal.App.5th at p. 763.) If the action is initiated by an interested person, it is referred to as a reverse validation action. (*Id.* at p. 764.) “The procedures for validation actions are accelerated so the agency or interested persons can

obtain a definitive ruling on the validity of the agency's action. [Citation.] If the validation statutes apply, the complaint must be filed within 60 days of the agency's act being challenged. [Citation.]" (*Ibid.*)

Recognizing that "not all actions of a public agency are subject to validation," we noted in *Holloway* that Code of Civil Procedure section 860 permits validation as to " 'any matter which under any other law is authorized to be determined pursuant to this chapter.' " (*Holloway, supra*, 22 Cal.App.5th at p. 764.) Vierra argued, and argues here as well, that because Holloway's complaint sought to "challenge a county water district's action of entering into a contract, it is subject to Water Code section 30000 et seq., which provides in relevant part, 'County water districts shall be managed under the provisions of this division' " (*Ibid.*) "Water Code section 30066 further provides: 'An action to determine the validity of an assessment, or of warrants, contracts, obligations, or evidence of indebtedness . . . may be brought pursuant to Chapter 9' Because Water Code section 30066 encompasses validation of contracts, [Vierra] asserts it necessarily applies to the present case involving Holloway's challenge to District's real estate contract" thus requiring Holloway to first bring a validation action within the 60-day time period. (*Ibid.*)

We found that Vierra's ". . . broad reading of Water Code section 30066 to include *all* contracts entered into by a county water district being subject to the validation requirements" was contrary to persuasive authority that the term "contracts" should be viewed narrowly to include " 'only those that are in the nature of, or directly relate to a public agency's bonds, warrants or other evidences of indebtedness.' [Citation.]" (*Holloway, supra*, 22 Cal.App.5th at pp. 764-765.) We noted our Supreme Court has concluded "... a broad reading of the term 'contracts' would unduly burden taxpayers challenging government actions, because virtually all government actions would fall within the definition. . . . [S]uch a broad and sweeping definition was not part of the overarching scheme of validation statutes. [Citation.]" (*Id.* at p. 765.)

We also rejected Vierra’s contentions based on our reading of *Santa Clarita Organization for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300 (*Abercrombie*), a case similar both to *Holloway* and the one at bar, where the court specifically considered whether conflict of interest actions under sections 1090 and 91003⁷ of the Political Reform Act are subject to the validation statutes in the Water Code. “In *Santa Clarita Organization for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300 (*Abercrombie*), a wholesale water agency adopted a resolution authorizing an eminent domain action to acquire the stock of the water company. At the time, an agency board member was also serving as the general manager of a water company. Santa Clarita Organization for Planning and the Environment (SCOPE), a taxpayer organization, brought an action for conflict of interest pursuant to section 1090 against the board member for his involvement on both sides of the transaction.” (*Holloway, supra*, 22 Cal.App.5th at p. 765.)

The *Abercrombie* court concluded that conflict of interest actions brought pursuant to sections 1092, and 91003, are not part of the validation statutes stating: “[b]ecause the conflict of interest claim is brought pursuant to [Government Code] sections 1092, subdivision (b) and 91003, neither of which are part of or subject to the validation statutes, SCOPE’s conflict of interest claim does not appear to be subject to the validation statutes” (*Abercrombie, supra*, 240 Cal.App.4th at p. 308.) The court also concluded that because SCOPE was not challenging the agency’s use of bonds, warrants or other evidences of indebtedness, and because “no statute declares SCOPE’s conflict of interest claim to be subject to the validation statutes,” the expedited procedural requirements of those statutes did not apply. (*Id.* at p. 310.)

⁷ Section 91003 is one of the enforcement provisions of the Political Reform Act, and states, in relevant part: “Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. . . .” (§ 91003, subd. (a).)

In *Abercrombie*, the court considered the applicability of the validation statutes to section 91003, one of the enforcement provisions of the Political Reform Act. Here, Vierra argues that the validation statutes apply to section 91005, the liability provision of the Political Reform Act. We conclude section 91005, like section 91003, is within the statutory scheme of the Political Reform Act, and is not subject to the validation statutes. (*Abercrombie, supra*, 240 Cal.App.4th at p. 308.) Based on *Abercrombie* and our interpretation of the contract provision in Water Code section 30066, we again conclude that the 60-day validation statutes do not apply to bar Holloway’s claim.

3. Four-Year Statute of Limitations

Vierra argues that Holloway’s action is barred by the four-year statute of limitations as stated in section 91011, subdivision (b), which provides: “No civil action alleging a violation of any provisions of this title . . . shall be filed more than four years after the date the violation occurred.”

In *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 (*Aryeh*) our Supreme Court summarized the law governing limitations periods. The statute of limitations begins running “from the moment a claim accrues.” (*Ibid.*) A “ ‘cause of action accrues “when [it] is complete with all of its elements”—those elements being wrongdoing, harm, and causation.’ [Citations.] This is the ‘last element’ accrual rule: ordinarily, the statute of limitations runs from ‘the occurrence of the last element essential to the cause of action.’ ” (*Ibid.*)

The last element essential to the cause of action for a violation of section 91005, subdivision (b)⁸ is a public official’s realization of financial benefit for participating in a

⁸ Section 91005, subdivision (b) provides: “Any designated employee or public official specified in Section 87200, except an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a conflict of interest code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.”

government decision in which that official knows he or she has a financial interest. Here, Holloway asserts that the action is timely, because the complaint was filed on November 7, 2014, and the last element of the cause of action was satisfied on November 29, 2010, when Vierra realized a financial benefit through his wife's receipt of the commission check for the sale of the property.

Vierra argues that he realized the financial benefit from the sale when his wife "earned" her commission by signing an exclusive listing agreement. Vierra cites *Austin v. Richards* (1956) 146 Cal.App.2d 436 (*Austin*), and *Schmidt v. Berry* (1996) 183 Cal.App.3d 1299, 1309-1310 (*Schmidt*) for the proposition that Vierra's right to his wife's commission vested when the parties signed the listing agreement on October 10, 2010. In *Austin*, the plaintiff real estate broker sued the property seller for rescinding their agreement for the broker's exclusive right to sell the property prior to the close of escrow. The court held that the seller's promise to pay the broker his commission was absolute when the parties signed the listing agreement and was not contingent on escrow closing. (*Austin, supra*, at p. 440.) Similarly, the court in *Schmidt*, following the reasoning in *Austin*, held that the right to collect a commission vested when the broker presented a "ready, willing and able buyer," and was not contingent on the closing of escrow. (*Schmidt, supra*, at pp. 1309-1310.)

We are not persuaded by Vierra's argument that he realized a financial benefit when his wife signed the listing agreement to sell the property. There is no ambiguity in the language of section 91005, subdivision (b). The plain meaning of the term "realize" as defined by Merriam-Webster is "to convert to actual money," and "to bring or get by sale, investment or effort." (Merriam-Webster Dict. Online (2019) <<https://www.merriam-webster.com/dictionary/realize>>[as of Mar. 12, 2019], archived at <<https://perma.cc/8CLV-N5SR>>.) We conclude, consistent with *Austin* and *Schmidt*, while the *right to collect* a commission vests when a broker enters into an exclusive

listing agreement and presents a buyer to the seller, the broker “*realizes*” the financial benefit when the commission is actually paid.

Here, Vierra realized the financial benefit of the sale of property as contemplated in section 91001, subdivision (b) when his wife was paid her commission on November 29, 2010. Therefore, the last element of Vierra’s violation of section 91005 accrued on that date, and Holloway’s filing of the initial complaint on November 7, 2014, was within the four-year statute of limitations under section 91011, subdivision (b).

4. *Government Claims Act*

Vierra argues that Holloway violated the Government Claims Act because he neither presented a written claim to Vierra requesting money damages within the specified statutory period, nor alleged compliance with the Government Claims Act in his complaint.

The Government Claims Act requires that “all claims for money or damages against local public entities” must be presented in accordance with the claim presentation statutes. The Government Claims Act “establishes certain conditions precedent to the filing of a lawsuit against a public entity. As relevant here, a plaintiff must timely file a claim for money or damages with the public entity. (§ 911.2.) The failure to do so bars the plaintiff from bringing suit against that entity. (§ 954.4.)” (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237.) “Unless a specific exception applies, ‘[a] suit for “money or damages” includes all actions where the plaintiff is seeking monetary relief, regardless whether the action is founded in “ ‘tort, contract or some other theory.’ ” [Citation.] (*California School Employees Assn. v. Governing Bd. of South Orange County Community College Dist.* (2004) 124 Cal.App.4th 574, 589.)

However, Holloway’s action for violation of the Political Reform Act is against Vierra as an *individual*, not as an *entity*. We find no ambiguity in the language of the statute and ascribe the plain meaning to the term “entity,” which Merriam-Webster defines as: “an organization (such as a business or governmental unit) that has an identity

separate from those of its members.” (Merriam-Webster Dict. Online (2019) <<https://www.merriam-webster.com/dictionary/entity>>[as of Mar. 12, 2019], archived at <<https://perma.cc/B9H5-FH7S>>.) Vierra provides no contrary authority that the Government Claims Act applies to individuals. We find that Holloway’s action against Vierra is not barred by a failure to comply with the provisions of the Government Claims Act.

5. Public Official Pursuant to Section 87200

Vierra argues that he is not a “public official” who “managed public investments” within the meaning of section 87200. Section 87200 provides: “This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of the High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and *other public officials who manage public investments*, and to candidates for any of these offices at any election.” (Emphasis added.)

California Code of Regulations, title 2, section 18700.3 provides definitions for section 87200 as follows: “(b) For purposes of Section 87200, the following definitions apply: [¶] (1) ‘Other public officials who manage public investments’ means: [¶] (A) Members of boards and commissions, including pension and retirement boards or commissions, or of committees thereof, who exercise responsibility for the management of public investments; [¶] (B) High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments, such as chief or principal investment officers or chief financial managers. This category shall not

include officers and employees who work under the supervision of the chief or principal investment officers or the chief financial managers; and [¶] (C) Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions that would otherwise be performed by the public officials described in subdivision (b)(1)(B). [¶] (c) ‘Public investments’ means the investment of public moneys in real estate, securities, or other economic interests for the production of revenue or other financial return. [¶] (d) ‘Public moneys’ means all moneys belonging to, received by, or held by, the state, or any city, county, town, district, or public agency therein, or by an officer thereof acting in his or her official capacity, and includes the proceeds of all bonds and other evidences of indebtedness, trust funds held by public pension and retirement systems, deferred compensation funds held for investment by public agencies, and public moneys held by a financial institution under a trust indenture to which a public agency is a party. [¶] (e) ‘Management of public investments’ means the following nonministerial functions: directing the investment of public moneys; formulating or approving investment policies; approving or establishing guidelines for asset allocations; or approving investment transactions.”

The evidence at trial supports the conclusion that Vierra, as a District director, was a “public official,” who “managed public investments.” Three of Vierra’s fellow District directors James Rapoza, Fred McPherson, and James Nelson, all testified that the board formulates and approves the investment policy for the District. They also testified that the board approves and establishes guidelines for asset allocation and investment transactions. The District Manager testified that the board’s investment policy is developed and approved by the board, which includes approving and establishing guidelines for asset allocation. The board also approves investment transactions. In addition, the board’s policy manual states that the board is responsible for “all District finances,” including establishing written guidelines for the investment of all District funds.

Vierra argues that we should give deference to the decision of the California Fair Political Practices Commission (“FPPC”), which determined that another District director, Eric Hammer, did not come within the provisions of section 87200. Vierra cites *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1 in support of his argument, which held that a court should exercise its independent judgment when interpreting a statute, taking into consideration an interpretation by the agency. Vierra asserts that “[t]he FPPC concluded Vierra is outside section 87200.” However, he cites no competent evidence in the record supporting this claim. The letter and determination of the FPPC that Hammer was not a public official for the purpose of section 87200 was not admitted into evidence at trial because the court ruled it was “irrelevant, as the letter pertained to a different matter, and was hearsay.”

Vierra also argues that that directors, such as himself, do not “manage public investments,” because that is the job of district staff. He points to the provision in Water Code section 30541, which states “A director shall not be the general manager, secretary, treasurer, or auditor.” Vierra argues that the auditor and the treasurer of District deposit money and manage bank accounts, among other responsibilities. (See, §§ 53633, 53634, 53643.)

While District staff may have the authority to conduct routine or even ministerial financial operations for District, this does not negate the fact that District directors manage the public investment of District funds by directing investment policy, investment transactions and investment allocation. These responsibilities, which require that the District directors exercise decisional authority, fall squarely within those enumerated in the Code of Regulations section 18700.3. The evidence in this case clearly shows the Vierra, as a District director, “exercise[d] responsibility for the management of public investments” within the meaning of section 18700.3, and therefore, is a “public official” pursuant to section 87200.

6.

Conclusion

We find that Holloway's action is not barred by the 60-day validation statute of limitations pursuant to Water Code section 30000 et seq., and Code of Civil Procedure sections 860 and 863, nor is it barred by the four-year statute of limitations pursuant to section 91011, subdivision (b). We also find that Holloway was not required to present a claim pursuant to the Government Claims Act, because his action is against Vierra, an individual, not a government entity. Finally, we find that Vierra is a "public official" under section 87200. We therefore affirm the judgment in Case No. H044505.

B.

Case No. H044800

Vierra argues that the trial court erred in ordering him to pay \$116,647.47 in attorneys' fees. Specifically, he asserts that the trial court did not understand that it had discretion to deny the fee request under section 91003 and Code of Civil Procedure section 1021.5, it granted a multiplier to the fee amount without supportive findings, made a mathematical miscalculation in the fee award, and it based its final fee on an incorrect assumption about the amount of actual fees incurred.

1.

Standard of Review

The Political Reform Act provides: "The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees." (§ 91003, subd. (a).) Code of Civil Procedure section 1021.5⁹ provides for awards of attorneys' fees in public interest cases. An award of attorneys' fees under Code of Civil Procedure section 1021.5 is reviewed for abuse of discretion. (*Roybal v. Governing Bd. of Salinas City Elementary School Dist.* (2008) 159 Cal.App.4th 1143, 1148.) The "standard of review affords considerable deference to the trial court provided that the

⁹ Holloway's motion for attorneys' fees was brought "pursuant to Government Code § 91003 or Code of Civil Procedure § 1021.5." Code of Civil Procedure section 1021.5 is "a codification of the 'private attorney general' attorney fee doctrine" developed in case law. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933.)

court acted in accordance with the governing rules of law.” (*Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158 (*Mejia*).)

2.

Trial Court Discretion

Code of Civil Procedure section 1021.5 provides: “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”

Section 91003, subdivision (a), provides that “[a]ny person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. . . . The court may award to a plaintiff or defendant who prevails his [or her] costs of litigation, including reasonable attorney’s fees.”

Both section 91003 and Code of Civil Procedure section 1021.5 grant the trial court discretion to award fees to a successful party. However, Vierra argues that the trial court “misapprehended its discretion to deny fees.” He points to the following statement the court made at the fee hearing: “And case law makes clear that, because of the uncertainty of these cases and the difficulty of recovery, that there should be some multiplier applied to the actual fees incurred.” Vierra asserts this statement demonstrates that the court believed it was “compelled to award fees here and to grant a multiplier,” and in fact, the court was permitted to exercise its discretion to deny fees under both section 91003 and Code of Civil Procedure section 1021.5.

We are not persuaded that the trial court “misapprehended” its discretion in this case. The court’s statement at the hearing: “case law makes clear that . . . there should be some multiplier applied to the actual fees incurred,” is not a misstatement of the law,

and does not demonstrate that the court believed that it had no discretion to deny fees. Moreover, “[w]e presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise. [Citations.]” (*Mejia, supra*, 156 Cal.App.4th at p. 158.) Vierra has not affirmatively shown that the court did not properly apply the law and exercise its discretion in this case.

3. *Trial Court’s Use of a Multiplier*

“Generally, an order granting or denying attorney fees under section 1021.5 is reviewed for abuse of discretion.” (*Bui v. Nguyen* (2014) 230 Cal.App.4th 1357, 1367.) “[T]he award will be upheld unless ‘there is no substantial evidence to support the trial court’s findings or when there has been a miscarriage of justice. If the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence.’ ” (*Id.* at p. 1368.)

Attorneys’ fees under Code of Civil Procedure section 1021.5 are determined in the trial court’s discretion. “The trial court’s exercise of discretion will not be disturbed unless the appellate court is convinced the award is clearly wrong, since the experienced trial judge can best determine the value of professional services rendered in that judge’s court. [Citation.]” (*Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983, 993 (*Downey*), fn. omitted.)

The court has discretion to adjust fees by using a multiplier in order “to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (*Ketchum*)). In adjusting fees “[t]he ‘experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course

subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.” ’ [Citation.]” (*Id.* at p. 1132.)

Here, Holloway requested a total of \$106,043.16 in attorneys’ fees. This amount included \$68,003.21 in attorneys’ fees that were actually incurred, with an additional 50 percent multiplier. The adjusted fee was based on the fact that Holloway and his attorneys entered into a hybrid fee agreement, wherein his attorneys agreed to an hourly fee that was below Bay Area market rates in addition to a contingent fee that would raise the hourly fee to market rate. The discounted hourly fees for attorney John Brown were \$250 per hour, for a total of \$3,650. The discounted hourly fees for attorney Gary Redenbacher were \$350 per hour for a total of \$63,509.36. Finally, the discounted hourly fees for the firm’s paralegal, Sharon Clark, were \$95 per hour, for a total of \$843.85. The additional 50 percent multiplier increased the hourly fees to \$375 per hour for John Brown and \$525 per hour for Gary Redenbacher, raising the total adjusted fees to \$101,582.89.¹⁰ In addition to the adjusted fee, Holloway requested \$4,460.27 for the fees incurred to pursue the attorneys’ fees motion, for a total of \$106,043.16.

In support of the request for the addition of a 50 percent multiplier, Holloway presented the declaration of his counsel Gary Redenbacher, who attested to specific information regarding prevailing rates for attorneys in the Bay Area with similar experience. He stated that colleagues with 20 or more years of experience charged \$500 to \$900 per hour. Mr. Redenbacher also consulted the Laffey Matrix,¹¹ which stated that the hourly fee in the Washington D.C. area is \$826 per hour, as well as the National Law

¹⁰ This total reflects a small calculation error. The correct total with the addition of a 50 percent multiplier is \$102,004.81.

¹¹ The Laffey Matrix is “The primary tool for assessing legal fees in the Washington-Baltimore area.” (Laffey Matrix home page <<http://www.laffeymatrix.com>>[as of Mar. 12, 2019], archived at <<https://perma.cc/5W69-LDKY>>.) Laffey Matrix may be used to calculate prevailing rates for attorneys’ fees. (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702.)

Journal, which stated the average fee for an attorney in a large firm in San Francisco is \$825 per hour.

In addition to the 50 percent multiplier, the court added a ten percent multiplier to the total amount Holloway had requested, making the final award \$116,647.47. Vierra argues that the total fee award that included both the additional 50 percent and ten percent multipliers was the result of the court's incorrect assumption about the actual fees incurred. Vierra bases this argument on the oral record at the hearing on the motion for attorneys' fees, wherein the court stated: "Mr. Redenbacher asked me to apply a 50 percent multiplier, and I haven't done that. I've applied a very minimal multiplier, based on my evaluation of the overall case and my recognition that this attorney fee award would be a substantial hardship on Mr. Vierra." Vierra asserts that the court intended to apply the minimal multiplier of ten percent to the actual fees incurred of \$68,003.21, rather than to the fees of \$101,582.89 that included a 50 percent multiplier. He argues that the court's decision to combine the 50 percent multiplier and the 10 percent multiplier belies the court's representation that it intended to impose a "minimal" multiplier.

In order to correct what he perceived was a clerical error in the court's fee calculation, Vierra brought a motion in the trial court on the ground that the court based its award on a misunderstanding of the actual amount of attorneys' fees incurred. The court denied the motion, stating: "It is true that the court's oral recitation of its analysis of the fee request made an erroneous assumption regarding the actual attorneys [sic] fees incurred However, the ultimate amount of the fee award approved by the court constituted the courts [sic] determination of what the appropriate fee award should be in light of all of the circumstances, and giving due regard to the factors to be considered in making such a determination."

The court's order denying Vierra's motion to correct a clerical error indicates that it may have based its final award on an incorrect assumption that the actual fees incurred

by Holloway’s counsel were \$101,582.89 rather than \$68,003.21. However, when presented with the opportunity to review that award, the court stated that it considered the final fee amount reasonable under all of the circumstances of the case—it made a conscious decision to affirm its fees order. We note that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom. (*Ketchum, supra*, 24 Cal.4th at p. 1132.) Here, the court’s overall evaluation of the case and its determination that the ultimate award was reasonable under the circumstances is entitled to deference. In the circumstances presented here, we cannot say this judge was “ ‘ “clearly wrong.” ’ ” (*Ibid.*)

Moreover, the fact that the court did not provide specific factual findings to support its addition of a multiplier does not demonstrate error. The court expressed its reason for imposing a multiplier at the hearing on the motion for attorneys’ fees by stating, “because of the uncertainty of these kinds of cases and the difficulty of recovery, [] there should be some multiplier applied to the actual fees incurred.” In its order denying Holloway’s motion to correct a clerical error, the court specifically stated that in determining the final award, it considered “all of the circumstances,” and gave “due regard to the factors to be considered” “We are entitled to presume the trial court considered all the appropriate factors in choosing the multiplier and applying it to the whole lodestar.” (*Downey, supra*, 196 Cal.App.3d at p. 998.)

In addition to that legal presumption, the evidence Holloway presented regarding prevailing attorney rates amply supported the adjusted fee of \$101,582.89 to meet the goal of awarding fees consistent with market rates in the Bay Area. In addition, the use of a multiplier is in accord with the fundamental objective of the private attorney general doctrine of attorney fees, which is “ ‘to encourage suits effectuating a strong [public] policy by awarding substantial attorney’s fees . . . to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens.’ [Citation.]” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 43.) “The doctrine rests upon the recognition that privately

initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible. [Citation.]” (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 933.)

The fact that Vierra did not act with “evil intent” in voting on the bill lists associated with the property purchase does not require the trial court to balance the equities to reduce an award of attorneys’ fees under the Political Reform Act. The fact that an individual may have acted in good faith despite violating the Political Reform Act is not a factor for the court to consider when awarding attorneys’ fees. (*People v. Roger Hedgecock for Mayor Com.* (1986) 183 Cal.App.3d 810.) “[T]he primary purpose of the prevailing party attorneys’ fee provisions of the Political Reform Act is to encourage private litigation enforcing the Act.” (*Id.* at p. 816.) Moreover, “[t]he attorney’s fees provisions of the Political Reform Act are designed to ameliorate the burden of the individual citizen who seeks to remedy what is essentially a collective wrong.” (*Id.* at pp. 815-817.)

4.

Conclusion

We find that the court did not abuse its discretion in ordering Vierra to pay \$116,647.47 in attorneys’ fees. We presume the court properly applied the law and exercised its discretion to order fees under section 91003 and Code of Civil Procedure section 1021.5. We also find that the court’s use of a multiplier was well within its discretion, and was supported by the evidence and the circumstances of the entire case.

III.

DISPOSITION

In case No. H044505, the judgment is affirmed. In case No. H044800, the attorneys’ fees order is affirmed. The costs on appeal are awarded to Holloway.

Greenwood, P.J.

WE CONCUR:

Grover, J.

Danner, J.

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